

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

LINDABETH RIVERA, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No.: 1:16-cv-02714

Judge: Honorable Edmond E. Chang

Magistrate Michael T. Mason

JOSEPH WEISS, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

**GOOGLE INC.'S CONSOLIDATED MOTION TO DISMISS PLAINTIFFS' FIRST
AMENDED COMPLAINTS PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendant Google Inc. ("Google") hereby moves this Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for an order dismissing the First Amended Complaints of Plaintiffs Lindabeth Rivera and Joseph Weiss ("Plaintiffs") with prejudice. Google has conferred with Plaintiffs and Plaintiffs oppose this Motion. In support of its Motion, Google states as follows:

1. On March 1, 2016 and March 4, 2016, respectively, Plaintiffs filed Class Action Complaints against Google alleging violations of the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq.* in connection with Google Photos, a free, "cloud-based" service that helps users store and organize photos. *See* Rivera Dkt. No. 1; Weiss Dkt. No. 1.

2. Pursuant to this Court's order, *see* Rivera Dkt. 30, Weiss Dkt. 30, Google filed a Consolidated Motion to Dismiss both Complaints on May 18. The Court then consolidated the

two cases, *see* Rivera Dkt. 36, and each Plaintiff filed a First Amended Complaint on May 27, mooting Google's then-pending Motion to Dismiss, *see* Rivera Dkts. 40, 41.

3. On June 10, 2016, the Court granted the parties' agreed scheduling motion, extending the date for Google to respond to Plaintiffs' First Amended Complaints to June 17, 2016 and permitting Google to file a single, consolidated motion to dismiss with a memorandum of law in support not to exceed thirty pages. *See* Rivera Dkt. 47. The Court's order also set forth a briefing schedule for the Plaintiffs' opposition and Google's reply. *Id.*

4. Google now moves to dismiss this action with prejudice on three separate grounds, as more fully set forth in Google's Memorandum of Law in Support of Its Consolidated Motion to Dismiss Plaintiffs' First Amended Complaints Pursuant to Fed. R. Civ. P. 12(b)(6), filed contemporaneously herewith and incorporated herein.

5. First, BIPA expressly does not regulate photos or information derived from photos. Thus, BIPA does not apply to the Google Photos service.

6. Second, BIPA does not apply extraterritorially, and Plaintiffs' First Amended Complaints do not allege that Google's alleged violation of BIPA occurred in Illinois.

7. Third, under Plaintiffs' interpretation of BIPA, the statute would effectively regulate conduct occurring wholly outside Illinois' borders, which would violate the dormant Commerce Clause of the United States Constitution.

WHEREFORE, for the reasons set forth herein and in Google's Memorandum of Law in Support of Its Consolidated Motion to Dismiss Plaintiffs' First Amended Complaints Pursuant to Fed. R. Civ. P. 12(b)(6), Google respectfully requests that this Court dismiss Plaintiffs' First Amended Complaints with prejudice and for such other and further relief the Court deems necessary and proper in the interests of justice.

Dated: June 17, 2016

GOOGLE INC.,

By: /s/ Susan D. Fahringer
Susan D. Fahringer

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